berlake v. *Thayer*, 71 Miss. 279. The rule of the principal case is frequently followed on the ground that there is an implied promise to pay at the contract price for part performance, if further performance becomes impossible. *Butterfield* v. *Byron*, 153 Mass. 517. Such a construction seems nothing more than an unjustifiable fiction, and is opposed to the weight of American authority. *Siegel Cooper Co.* v. *Eaton & Prince Co.*, 165 Ill. 550.

CORPORATIONS — FEDERAL JURISDICTION — FORMATION OF NEW CORPORATION TO EFFECT DIVERSITY OF CITIZENSHIP. — The stockholders of a corporation organized in another state a new corporation, with the same officers and stockholders, in order to get a suit concerning certain land into the federal courts. The land was transferred by the first corporation to the second, which then brought an action in the federal court against a citizen of the state in which the original corporation was incorporated. *Held*, that the action is dismissed as an attempted fraud on the federal jurisdiction. *Miller & Lux* v. *East Side Canal, etc., Co.*, U. S. Sup. Ct., Dec. 7, 1908. See NOTES, p. 290.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — SUIT BY STOCKHOLDERS ON CORPORATION'S CAUSE OF ACTION. — M was a director and majority shareholder in the plaintiff corporation. The other three directors, who owned the remaining shares, became interested in a rival company, and refused to sanction proceedings against it for infringement of the plaintiff's patent. Thereupon M brought action in the plaintiff's name to restrain the rival company. His fellow-directors applied to have the name of the plaintiff struck out, as having been used without authority. *Held*, that the application must be dismissed, as the majority shareholders had the right to control the action of the directors in the matter. *Marshall's Valve Gear Co., Ltd.* v. *Manning, Wardle & Co., Ltd.*, 25 T. L. R. 69 (Eng., Ch. D., Nov. 13, 1908).

In this country an action in the corporate name usually can be brought only by the directors. *Arkansas River, etc., Co.* v. *Farmers' Loan & Trust Co.*, 13 Colo. 587. But disloyalty on the part of directors in their fiduciary relations to the stockholders will justify the latter in equitable proceedings to compel proper action. *Singers-Bigger* v. *McCourt*, 145 Fed. 103. And where directors decline to sue, any stockholder can secure an injunction to prevent a third party, aided by the directors, from wronging the plaintiff's corporation. *Weidenfeld* v. *Sugar Run Co.*, 48 Fed. 615. The corporation and the wrongdoer, however, must be joined as parties defendant. *Donelly* v. *Sampson*, 115 N. W. 1089. In England the majority shareholders can decide whether an action in the corporate name shall proceed. *Pender* v. *Lushington*, 6 Ch. Div. 70, 79. And any shareholder may file a bill against the directors, joining the corporation as co-plaintiff. *MacDougall* v. *Gardiner*, 1 Ch. Div. 13. If a dispute arises as to which side represents the majority shareholders, the court will grant a temporary injunction until it is determined. *Pender* v. *Lushington*, *supra*. In neither country is there authority for action, as sanctioned by the main case, brought by shareholders against a wrongdoer, without proceeding through the directors, either as plaintiffs or defendants.

CORPORATIONS — TRANSFER OF STOCK — SECRET AGREEMENT BY CORPORATION TO REDEEM STOCK. — In consideration of his subscription to the capital stock of a corporation, the subscriber was promised that at any time within ten years the corporation would buy back his stock at par value, on ninety days' notice. *Held*, that the agreement is void. *Matter of Owen Publishing Co.*, 20 Am. B. R. 639 (Circ. Ct., W. D. N. Y., May, 1908).

A corporation cannot, unless the power be especially delegated, change the amount of its capital stock. *Scovill* v. *Thayer*, 105 U. S. 143. The purchase of its own shares amounts to a reduction, and an agreement to purchase is bad for that reason. *Currier* v. *The Slate Co.*, 56 N. H. 262. Furthermore, such an agreement is a fraud on creditors, for if it were carried out it would diminish their security, at least until a resale. *Copin* v. *Greenless and Ransom Co.*, 38 Oh. St. 275. In the principal case even a resale would not protect creditors;

for, the purchase coming after insolvency, the company would be buying in at par shares which had fallen in value. And the courts go great lengths to prevent individual shareholders from escaping their proportionate liability. For instance, where a creditor of a corporation took its shares at twenty per cent. of their par value in payment of a debt, it was held that he was liable for the unpaid balance. *Jackson* v. *Turner*, 64 Ia. 469. As the secret agreement in the principal case would release the subscriber from liability, the court seems clearly right in holding it void.

EQUITY — JURISDICTION — LIABILITY OF PURCHASER AT FORECLOSURE SALE. — In an action to foreclose a junior mortgage, the property was sold subject to a prior mortgage. The purchaser failed to complete payment at the proper time, and the property was thereafter sold under a judgment of foreclosure on the prior mortgage. The junior mortgagee then made a motion that the court direct the purchaser to pay the damages caused by the latter's default. *Held*, that the purchaser must pay. *State Bank* v. *Wilchinsky*, 112 N. Y. Supp. 1002 (App. Div.).

The jurisdiction of a court of equity to compel a purchaser at a sale made under its decree to complete his purchase or to pay damages, is well settled. *Wood* v. *Mann*, 3 Sumn. (U. S.) 318. It is frequently given as an all-sufficient reason for such jurisdiction, that since the purchaser has made himself a party to the proceedings, he may be compelled to perform his undertaking. See *Archer* v. *Archer*, 155 N. Y. 415. The real basis, however, for holding that the purchaser has made himself a party to the proceedings is the contract implied between him and the referee. See *Harding* v. *Harding*, 4 Myl. & C. 514; *Hegeman* v. *Johnson*, 35 Barb. (N. Y.) 200. The referee is under obligation to convey title, and the purchaser to pay the agreed price. *Townshend* v. *Simon*, 38 N. J. L. 239. And the referee may bring an action at law against the purchaser, for the mortgagee's benefit. *Sharman* v. *Walker*, 68 Ga. 148. But the theory that there is a contract has been repudiated in New York, so that there is no remedy against the purchaser, except as in the principal case by application to the court of equity which entertained the original suit. *Miller* v. *Collyer*, 36 Barb. (N. Y.) 250. This limitation of the purchaser's liability seems hardly justifiable.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ANCILLARY JURISDICTION. — The plaintiff, in a suit properly brought in a federal court, obtained a decree for the payment of damages. An execution was issued and returned unsatisfied. The plaintiff then filed the present bill in the same court praying that fraudulent conveyances by some of the defendants to the first bill be set aside and the execution satisfied. The plaintiff was a citizen of Massachusetts and some of the alleged fraudulent grantees, who had been made parties to the second bill, were citizens of the same state. These defendants moved to dismiss for want of jurisdiction. *Held*, that the bill is within the jurisdiction of the federal court. *Hobbs* v. *Gooding*, 164 Fed. 91 (Circ. Ct., D. Mass.).

In order to give jurisdiction on the ground of diverse citizenship, the diversity must exist between the plaintiff and all of the defendants. *Gage* v. *Riverside Trust Co.*, 156 Fed. 1002. The second bill here raised no federal question and was, therefore, clearly without the jurisdiction of the court in the absence of the original proceedings. There is, however, a well-established doctrine that after a federal court has once properly acquired jurisdiction, ancillary or supplemental proceedings may be therein entertained, without regard to the tests of jurisdiction applied to independent suits. *Root* v. *Woolworth*, 150 U. S. 401. Nor need the ancillary suit be between the same parties as the original suit. *Freeman* v. *Howe*, 24 How. (U. S.) 450. See *Krippendorf* v. *Hyde*, 110 U. S. 276, 280–281. The cases show a tendency to extend this jurisdiction rather than to curtail it. *White* v. *Ewing*, 159 U. S. 36. And that a court should exercise it to secure to litigants the benefit of its judgment or decree by removing obstacles to its enforcement seems logical. Bills substantially similar to that in the prin-